

REMARKS

This is in response to the Office Action mailed on June 17, 2004. In the Office Action, claims 1-13 were pending and were rejected. With this amendment, claims 1 and 11 are amended, and the remaining claims are unchanged in the application.

Page Two of the Office Action indicated that claims 1-13 were rejected under 35 U.S.C. § 102(b) as being anticipated by Paielli. Applicant respectfully submits that the reliance upon 35 U.S.C. § 102(b) is improper. Section 102(b) states that a person shall be entitled to a patent unless "the invention was patented or described in a printed publication in this or a foreign country . . . more than one year prior to the date of the application for patent in the United States." Applicant notes that the present application claims priority to U.S. Provisional Application Serial No. 60/400,368, filed July 31, 2002. Applicant further notes that the Paielli patent was issued May 7, 2002, which is less than one year before the priority date claimed by the present application.

Notwithstanding the above, Applicant has amended independent claims 1 and 11 to include the limitation that the capacitive plates are disposed "in contact with" the pad portion to more clearly distinguish the present invention. Claim 1 has also been amended to correct a minor typographical error. These amendments are supported, at least in part, by page 4, lines 20-25 and figs. 1-3 of Applicant's specification, which describes a brake pad, being made of non-conductive material, having a pair of parallel plate capacitors disposed therein. Applicant submits that the Paielli reference does not teach or suggest mounting the capacitive plates in contact with the brake pad material. Instead, the Paielli reference teaches mounting capacitive plates within a body, made of insulating material (i.e. plastic), and inserting the body into the brake pad. This is accomplished by drilling a hole in the brake pad and threading the body 22

containing the capacitive plates into the internally threaded opening 44 in the brake pad 42. Hence, the capacitive plates are in contact with the body and not with the brake pad. Consequently, as brake pad material is removed during the drilling process, the surface area of the brake pad is reduced. As a result, the braking capacity of the brake pad is also reduced. In contrast, in the present invention, the capacitive plates are mounted directly in, and in contact with, the brake pad. Accordingly, there is no brake pad material removed and no decline in brake pad performance.

In view of the foregoing, Applicant respectfully submits that independent claims 1 and 11, as amended, are neither taught nor suggested by the Paielli reference. Further, Applicant respectfully submits that the remaining dependent claims which depend from amended independent claims 1 and 11 are allowable as well.

Applicant respectfully submits that dependent claim 10 is allowable over Paielli regardless of the allowability of claim 1 in view of the following. Claim 10 recites a feature wherein contact between the capacitor plates and the rotor is used to indicate brake pad function. As a result, each brake pad may be independently analyzed to determine if it is functioning correctly. Applicant respectfully submits that this feature is neither taught nor suggested by Paielli.

In conclusion, Applicant respectfully submits that all claims are in condition for allowance. Reconsideration and allowance of all pending claims, 1-13, are respectfully solicited.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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